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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 08226/1203097-US1	
		Application Number 10/667,129-Conf. #7169	Filed September 16, 2003
		First Named Inventor Allen Fox et al.	
		Art Unit 3621	Examiner P. E. Elisca
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p>			
<p>I am the</p> <p><input type="checkbox"/> applicant /inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>46,900</u></p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. _____</p>		<p> Signature</p> <p>Thomas R. Marquis Typed or printed name</p> <p>(206) 262-8900 Telephone number</p> <p>August 20, 2007 Date</p>	
<p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>			
<p><input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.</p>			

{S:\08226\1203097-us1\80128462.DOC (10/667,129-Conf.#7169) (Allen Fox et al.) (P. E. Elisca) (08/20/2007 18:31 FAX 2062628901) }

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REASONS FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket No.: 08226/1203097-US1

REASONS FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicants respectfully request a pre-appeal brief review of the legal and factual bases of the rejections in the above-identified patent application. Pursuant to the guidelines set forth in the Official Gazette Notice of July 12, 2005 for the Pre-Appeal Brief Conference Pilot Program, favorable reconsideration of the subject application is respectfully requested in view of the following remarks. Claims 1-84 are pending. The Final Office Action dated April 16, 2007 (the "FOA") rejected Claims 1-84. In response to Applicant's additional arguments, the corresponding Advisory Action dated July 19, 2007 simply refers to the final rejection in the FOA.

Clear Errors in 103 Rejections

Claims 1-82 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allan (6,526,456) in view of Bass (6,744,446) and Hornbuckle (5,613,089). The FOA discusses claim limitations that are substantially similar, although different, in each of the independent Claims 1, 33, 36, 37, 44, 76, 79, 82, 83, and 84. For purposes of brevity for the pre-appeal brief conference, the discussion below relates to these independent claims. However, this should not be considered an assertion or admission that any of the claims stand or fall together. Applicant respectfully contends that at least one essential claim limitation is not disclosed or suggested by the combination of the cited references, and that there is no teaching, suggestion, motivation, or predictability to combine or modify the references.

A) Virtual Containers

The 103 rejections are clearly in error, because there is no disclosure, suggestion, motivation, or predictability of the claim limitation "assigning a collection of virtual containers to a set of users," as defined by the corresponding limitations "the collection identifying a rental package of a predefined quantity of virtual containers each of which is configured to identify the one or more software products."

The Bass reference is erroneously cited as disclosing the claim limitation "assigning a collection of virtual containers to a set of users." E.g. see FOA, pg. 3, lines 6-13. Bass clearly

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teaches away from this step. In contrast to the claim limitation, Bass teaches that a network manager assigns virtual containers to links between multiplexers and regenerators in a network. See e.g., Bass, col. 2, line 66 through col. 3, line 47 and Applicants' responses dated June 18, 2007, pg. 19, lines 9-15; January 23, 2006, pg. 17, lines 4-15; and September 1, 2005, pg. 17, line 17 through pg. 18, line 10. Bass defines different "virtual containers" as link configurations for transporting data at various speeds, and through various intermediate nodes, in a hierarchical network such as a [Synchronous Digital Hierarchy] SDH network. See e.g., Bass, col. 1, lines 36-58. Bass enables a network manager to assign and view communication capacities of links between network nodes. Clearly, Bass does not disclose, suggest, motivate, or indicate any predictability of the claim step that requires assigning a collection of virtual containers to a set of users.

It is also clear that there is no motivation, and it is not predictable to modify or combine the references to include Bass' virtual containers. Bass' communication link configurations for managing various speeds and intermediate nodes are clearly not analogous to renting software. Further, there is no motivation for, and it is not predictable to combine or modify the references, at least because the encryption of Hornbuckle teaches away from the unencrypted distribution of software by Allen. See Applicants' response dated June 18, pg. 20, line 20 through pg. 21, line 17. Accordingly, the rejections are clear error.

B) Predefined Quantity

The 103 rejections are also clearly in error, because there is no disclosure, suggestion, motivation, or predictability of the claim limitation "a predefined collection of virtual containers."

The Bass and/or Hornbuckle references are erroneously cited as disclosing the claim limitation. E.g. see FOA, pg. 3, lines 6-21 and Applicants' response dated June 18, 2007, pg. 18, line 22 through pg. 19, line 6. As discussed above, Bass does not teach virtual containers as defined by the other claim limitations, so Bass clearly does not teach a predefined quantity of virtual containers as defined by the other claim limitations. Bass does not even teach any predefined quantity of its own type of virtual containers. Any number of communication link levels can be viewed or assigned. See e.g., Bass, col. 2, lines 2-5.

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It is also clear that Hornbuckle does not teach a predefined quantity of virtual containers. The FOA maintains that Hornbuckle's "8-character package identifier code is interpreted as a predefined number." FOA, pg. 5, lines 7-8. But a number that represents an identifier code is clearly not a quantity. The FOA admits that Hornbuckle's identifier code is used as an encryption key to encrypt a software package. FOA, pg. 4, line 16 through pg. 5, line 1, citing Hornbuckle, col. 16, lines 24-62. See also, Applicants' responses dated June 18, 2007, pg. 19, lines 17-27 and February 2, 2007, pg. 17, line 21 through pg 18, line 5. An encryption key is clearly not a quantity.

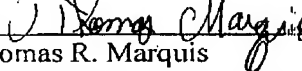
Even if 8 characters are considered a predefined quantity, each character position would have to be related to a virtual container. To relate to the claim limitations, each character position would have to identify one or more software products. But, Hornbuckle clearly teaches that each game software package is assigned the whole 8-character identifier. See FOA, pg. 4, lines 15-17; Hornbuckle, col. 16, lines 32-38; and Applicants' response dated August 23, 2006, pg. 18, lines 10-15. Also, Hornbuckle clearly teaches that one software package is one software game, not multiple software games. See Applicants' response dated August 23, 2006, pg. 18, lines 7-18. Thus, Hornbuckle teaches away from interpreting the 8 characters as a predefined quantity of virtual containers. Accordingly, the rejections based on Hornbuckle are clear error.

In view of the above, the rejections are clearly in error, and Applicant believes the pending application is in condition for allowance.

Dated: August 20, 2007

Respectfully submitted,

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